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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/780,288	02/09/2001	Harihara Rama Subramanian	010814.000010	6769

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ALCATEL USA  
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3400 W. PLANO PARKWAY, MS LEGL2  
PLANO, TX 75075

EXAMINER
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BATES, KEVIN T

ART UNIT	PAPER NUMBER
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2155

DATE MAILED: 07/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/780,288

Applicant(s)

SUBRAMANIAN ET AL.

Examiner

Kevin Bates

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 19-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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***Response to Amendment***

This Office Action is in response to a communication made on May 16, 2005.

Claims 1-9 and 19-23 are pending in this application.

Claims 10-18 have been cancelled.

Claims 1, 4, 5, and 6 have been amended.

Claims 19-23 are newly added claims.

***Election/Restrictions***

Newly submitted claims 19-23 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

- I. Claims 1-9, drawn to monitoring of packets in a data session, classified in class 709, subclass 223.
- II. Claims 19-23, drawn to allocating network resources based on a resource request, classified in class 709, subclass 226.

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as monitoring packets in a data flow to make sure the data flow is authorized and following the service agreements. See MPEP § 806.05(d).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 19-23 are withdrawn from consideration

as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voit (6157636) in view of Jorgensen (6640248).**

Regarding claim 1, Voit discloses a method, comprising the steps of monitoring, by a network access controller, data being transmitted from and received by a client system (Column 9, lines 1 – 17); receiving, in the network access controller, a request from the client system for a data service to be provided by a server system (Column 5, lines 61 – 67), the request being directed to the server system; determining if the client system is authorized for the data service; if the client system is authorized for the data service, then sending the request to the server system (Column 5, lines 60 – 67), but does not explicitly indicate that the system identifies data flows of different service levels and has premium billing of the data flow based on the service level and performing load balancing of active data service sessions across multiple paths in the network to the same destination. Jorgensen discloses a system that can identify data flows which need increased service levels and teaches the idea of premium billing based on that increased service level (Column 12, lines 51 – 66) and performing load balancing of

active data service sessions across multiple paths in the network to the same destination (Column 39, lines 40 – 45). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Jorgensen's teachings of service levels and billing ideas on Voit's system in order to have many types of applications and data flows in the network work according to a proper quality of service (Column 2, line 54 – Column 3, line 4).

Regarding claim 2, Voit discloses that the network access controller monitors individual packets passing between the client and the server (Figure 4, where it mentions IP Access Network Functions includes a firewall).

Regarding claim 3, Voit discloses that the network access controller identifies the request by analyzing each packet transmitted from the client system (Column 10, lines 45 – 51).

Regarding claim 4, Voit discloses that the network access controller determines if the client system is pre-authorized for the data service (Column 5, lines 59 – 65).

Regarding claim 5, Voit discloses that the network access controller determines if the client system is authorized by for a data service by requesting authorization from a management system (Column 5, lines 59 – 65).

Regarding claim 6, Voit discloses that the client system is authorized for a data service after a credit determination (Column 6, lines 61 – 65).

Regarding claim 7, Voit discloses that the user of the client is billed according to the specific data services authorized for the client system (Column 6, lines 18 – 32).

Regarding claim 8, Voit discloses that the network access controller discards any request from the client system which is not authorized (Column 6, lines 63 – 65; where network access won't be negotiated if not authorization is granted).

Regarding claim 9, Voit discloses the step of storing, in the network access controller, statistical data relating to the data services delivered to the client system (Column 5, lines 65 – 67).

### ***Response to Arguments***

Applicant's arguments filed April 18, 2005 have been fully considered but they are not persuasive. The applicant argues that the combination of Voit and Jorgensen, does not indicate load balancing of active data service sessions across multiple paths in the network to the same destination. The examiner disagrees, the reference Jorgensen, teaches as part of his QoS system on Column 39, lines 40 – 45 that there should be routing logic within the gateway or access into the network to allow the sessions to be balanced across multiple gateways and paths.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Bates whose telephone number is (571) 272-3980. The examiner can normally be reached on 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on (571) 272-4006. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

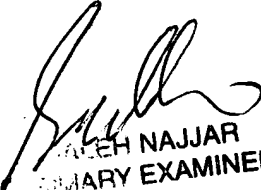
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KB

KB

July 5, 2005

  
HANEH NAJJAR  
SENIARY EXAMINER